

REMARKS

In response to the Office Action mailed January 16, 2009, Applicant has amended claims 1, 11 and 25. Claims 10 and 13 have been canceled and no new claims have been added. It is urged that support for all the above amendments may be found throughout the specification as originally filed, for example on page 17, lines 27-28. No new matter has been added.

Applicant kindly thanks the Examiner for noting that the instant written description and enablement rejections would be obviated by the present amendment to claims 1 and 25, which recites:

“the signal moiety capable of providing a detectable signal when cleaved by substantially all non-target microorganisms in the sample”

(see Office Action; paragraph bridging pages 3 and 4 and page 6, paragraph 1). Applicant further thanks the Examiner for withdrawing the obviousness rejection.

The above amendments are not to be construed as acquiescence with regard to the Examiner’s rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Following the amendments, claims 1, 7, 11, 12, 15 and 25 are pending and under examination in the application. Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

*Claim Rejections Under 35 U.S.C. § 112, First Paragraph, Written Description*

Claims 1, 7, 10-13, 15 and 25 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement for allegedly claiming subject matter which was not described in the specification in such a way as to reasonably convey to the skilled artisan that the inventor, at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner asserts that Applicant’s disclosure allegedly fails to identify which aminopeptidases are specifically absent from the target microorganisms, but are present in all non-target microorganisms.

Applicant respectfully traverses this basis of rejection and submits that the skilled artisan would readily understand that Applicant was in possession of the claimed invention at the time the application was filed.

The Examiner contends that the presently claimed compositions comprise a substrate for an aminopeptidase, wherein the aminopeptidase is substantially absent from the target microorganism and is cleaved by substantially all non-target microorganisms, which is interpreted to include any and all microorganisms that are not the target microorganism. Applicant respectfully disagrees. Applicant submits that the skilled artisan would easily recognize that an L-alanine aminopeptidase substrate is absent in the target microorganism (e.g., *Campylobacter*) and would be cleaved by substantially all non-target microorganisms in the sample (e.g., other Gram-negative bacteria).

However, Applicant, without acquiescence and solely in a good-faith effort to expedite prosecution, has amended claims 1 and 25 to recite “a signal moiety capable of providing a detectable signal when cleaved by substantially all non-target microorganisms in the sample”, thus obviating this basis for rejection. Accordingly, reconsideration and withdrawal of this basis for rejection is respectfully requested.

*Claim Rejections Under 35 U.S.C. § 112, First Paragraph, Enablement*

Claims 1, 7, 10-13, 15, and 25 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement. Specifically, the Examiner asserts that the as-filed specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with the claims. More specifically, the Examiner contends that the skilled artisan would be required to engage in undue experimentation in order to determine a single aminopeptidase substrate that is present in substantially all non-target microorganisms.

Applicant respectfully traverses these bases for rejection and submits that the as-filed specification provides ample disclosure and guidance to practice the entire claimed scope of the invention without undue experimentation.

Applicant respectfully disagrees and submits that the skilled artisan is aware of the type of bacterial pathogens that predominantly contaminate particular samples (e.g., poultry – *Campylobacter*; beef – *E. coli*). Furthermore, growth supporting media for the specific enrichment of *Campylobacter*, in combination with antibiotics to suppress the growth of non-target microorganism in the sample, including, but not limited to Gram positive bacteria, were known in the art at the time of filing the instant application (see, *Microbiology: Principles and Applications*. Creager, Black, and Davison, Prentice Hall publishers, 1990; Corry et al., 1995; and U.S. Patent No. 5,891,709). Thus, Applicant respectfully submits that the skilled artisan would not require undue experimentation to practice the presently claimed invention.

However, Applicant, without acquiescence and solely in a good-faith effort to expedite prosecution, has amended claims 1 and 25 to recite “a signal moiety capable of providing a detectable signal when cleaved by substantially all non-target microorganisms in the sample”, thus obviating this basis for rejection. Accordingly, reconsideration and withdrawal of this basis for rejection is respectfully requested.

Double Patenting

The Examiner contends that if claim 10 is found allowable, claim 25 will be objected to under 37 C.F.R. §1.75 as being a substantial duplicate of claim 10. Applicant, without acquiescence, has canceled claim 10, thus rendering this potential objection moot.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now believed to be clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,  
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